

HOUSE BILL No. 1454

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-26-5; IC 35-42-2-1.3.

Synopsis: Domestic violence and civil protection order act. Provides that a court may authorize a search warrant for a law enforcement officer to seize firearms, ammunition, or deadly weapons (weapons) pursuant to the civil protection order law if there is probable cause. Provides that a person whose weapons are seized pursuant to the civil protection order law may petition the court for the return of the weapons. Provides that certain fees will not be charged concerning foreign protection orders. Provides that a person who has a conviction for a crime that has similar elements to domestic battery in another jurisdiction and is convicted of domestic battery commits a Class D felony.

Effective: July 1, 2005.

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January 18, 2005, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1454

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-26-5-9 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) If it appears from
3 a petition for an order for protection or from a petition to modify an
4 order for protection that domestic or family violence has occurred or
5 that a modification of an order for protection is required, a court may:

6 (1) without notice or hearing, immediately issue an order for
7 protection ex parte or modify an order for protection ex parte; or

8 (2) upon notice and after a hearing, whether or not a respondent
9 appears, issue or modify an order for protection.

10 (b) A court may grant the following relief without notice and
11 hearing in an ex parte order for protection or in an ex parte order for
12 protection modification:

13 (1) Enjoin a respondent from threatening to commit or
14 committing acts of domestic or family violence against a
15 petitioner and each designated family or household member.

16 (2) Prohibit a respondent from harassing, annoying, telephoning,
17 contacting, or directly or indirectly communicating with a



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petitioner.

(3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.

(4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.

(5) Order possession and use of the residence, an automobile, and other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision, the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

(A) ensure that a petitioner is safely restored to possession of the residence, automobile, and other essential personal effects; or

(B) supervise a petitioner's or respondent's removal of personal belongings.

(6) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

(c) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (b).

(2) Specify arrangements for visitation of a minor child by a respondent and:

(A) require supervision by a third party; or

(B) deny visitation;

if necessary to protect the safety of a petitioner or child.

(3) Order a respondent to:

(A) pay attorney's fees;

(B) pay rent or make payment on a mortgage on a petitioner's residence;

(C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;

(D) reimburse a petitioner or other person for expenses related to the domestic or family violence, including:

(i) medical expenses;

(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property; or

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1 (E) pay the costs and fees incurred by a petitioner in bringing
2 the action.

3 (4) Prohibit a respondent from using or possessing a firearm,
4 ammunition, or a deadly weapon specified by the court, and direct
5 the respondent to surrender to a specified law enforcement agency
6 the firearm, ammunition, or deadly weapon for the duration of the
7 order for protection unless another date is ordered by the court.

8 **(5) Issue a search warrant authorizing a law enforcement**
9 **officer to seize any firearm, ammunition, or deadly weapon,**
10 **if the court determines there is probable cause to believe that**
11 **the respondent continues to possess any firearm, ammunition,**
12 **or deadly weapon.**

13 An order issued under subdivision (4) does not apply to a person who
14 is exempt under 18 U.S.C. 925.

15 (d) The court shall:

16 (1) cause the order for protection to be delivered to the county
17 sheriff for service;

18 (2) make reasonable efforts to ensure that the order for protection
19 is understood by a petitioner and a respondent if present;

20 (3) transmit, by the end of the same business day on which the
21 order for protection is issued, a copy of the order for protection to
22 each local law enforcement agency designated by a petitioner;

23 (4) transmit a copy of the order to the clerk for processing under
24 IC 5-2-9; ~~and~~

25 (5) notify the state police department of the order if the order and
26 the parties meet the criteria under 18 U.S.C. 922(g)(8); **and**

27 **(6) provide the respondent with a written notice of the**
28 **procedures required for a respondent to have a firearm,**
29 **ammunition, or a deadly weapon returned to the respondent**
30 **if the respondent's firearm, ammunition, or deadly weapon**
31 **has been seized under this chapter.**

32 (e) An order for protection issued ex parte or upon notice and a
33 hearing, or a modification of an order for protection issued ex parte or
34 upon notice and a hearing, is effective for two (2) years after the date
35 of issuance unless another date is ordered by the court. The sheriff of
36 each county shall provide expedited service for an order for protection.

37 (f) A finding that domestic or family violence has occurred
38 sufficient to justify the issuance of an order under this section means
39 that a respondent represents a credible threat to the safety of a
40 petitioner or a member of a petitioner's household. Upon a showing of
41 domestic or family violence by a preponderance of the evidence, the
42 court shall grant relief necessary to bring about a cessation of the

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1 violence or the threat of violence. The relief may include an order
 2 directing a respondent to surrender to a law enforcement officer or
 3 agency all firearms, ammunition, and deadly weapons:

- 4 (1) in the control, ownership, or possession of a respondent; or
- 5 (2) in the control or possession of another person on behalf of a
 6 respondent;

7 for the duration of the order for protection unless another date is
 8 ordered by the court.

9 (g) An order for custody, visitation, or possession or control of
 10 property issued under this chapter is superseded by an order issued
 11 from a court exercising dissolution, legal separation, paternity, or
 12 guardianship jurisdiction over the parties.

13 (h) The fact that an order for protection is issued under this chapter
 14 does not raise an inference or presumption in a subsequent case or
 15 hearings between the parties.

16 SECTION 2. IC 34-26-5-9.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2005]: **Sec. 9.5. (a) Within thirty (30) days after the expiration of**
 19 **an order for protection, a respondent may file a written motion**
 20 **with the court seeking the return of any firearm, ammunition, or**
 21 **deadly weapon seized under this chapter.**

22 (b) After receiving a motion described in subsection (a), the
 23 court shall:

24 (1) schedule a hearing not later than thirty (30) days after the
 25 expiration of the order for protection; and

26 (2) provide notice of the hearing to:

27 (A) the respondent; and

28 (B) the law enforcement agency that seized or is storing the
 29 respondent's firearm, ammunition, or deadly weapon.

30 (c) The scope of a hearing to consider a motion described in
 31 subsection (a) shall be limited to determining whether the
 32 respondent is subject to any state or federal law or court order that
 33 precludes the respondent from owning or possessing a firearm,
 34 ammunition, or a deadly weapon.

35 (d) The respondent has the burden of proof by clear and
 36 convincing evidence that the respondent is entitled to possess any
 37 firearm, ammunition, or deadly weapon seized under this chapter.

38 (e) If the court:

39 (1) determines that the respondent is not subject to a state or
 40 federal law or a court order precluding the respondent from
 41 possessing or owning a firearm, ammunition, or a deadly
 42 weapon; and

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(2) denies a petitioner's request to extend the order for protection, if a request is made;
the court shall issue a written order directing the law enforcement agency to return the respondent's firearm, ammunition, or deadly weapon to the respondent.

(f) A law enforcement agency:

(1) shall not release firearms, ammunition, or deadly weapons seized under this chapter unless a court orders the release of the firearms, ammunition, or deadly weapons; and

(2) may charge a respondent a reasonable fee for the storage of any firearms, ammunition, or deadly weapons seized under this chapter. A reasonable fee shall not exceed the actual cost incurred by the law enforcement agency for the storage of the firearms, ammunition, or deadly weapons.

(g) A law enforcement agency is not liable for any damage to firearms, ammunition, or deadly weapons that occurred in the storage or transportation of firearms, ammunition, or deadly weapons seized under this chapter.

(h) If a respondent fails to file a motion within the time specified in subsection (a), the firearms, ammunition, or deadly weapons seized under this chapter shall be forfeited to the law enforcement agency storing the firearms, ammunition, or deadly weapons.

SECTION 3. IC 34-26-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. Fees for:

- (1) filing;
- (2) service of process;
- (3) witnesses; or
- (4) subpoenas;

may not be charged for a proceeding seeking relief or enforcement as provided in this chapter, **including a foreign protection order as described in section 17 of this chapter.** This section may not be construed to prevent the collecting of costs from a party against whom an order for protection is sought if the court finds a claim to be meritorious and issues an order for protection under this chapter.

SECTION 4. IC 35-42-2-1.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.3. (a) A person who knowingly or intentionally touches an individual who:

- (1) is or was a spouse of the other person;
- (2) is or was living as if a spouse of the other person as provided in subsection (b); or
- (3) has a child in common with the other person;

in a rude, insolent, or angry manner that results in bodily injury to the

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1 person described in subdivision (1), (2), or (3) commits domestic
 2 battery, a Class A misdemeanor. However, the offense is a Class D
 3 felony if the person **who commits the offense** has a previous, unrelated
 4 conviction under this section (or IC 35-42-2-1(a)(2)(E) before its
 5 repeal), **or a conviction in any other jurisdiction in which the**
 6 **elements of the crime for which the conviction was entered are**
 7 **substantially similar to the elements described in this section.**

8 (b) In considering whether a person is or was living as a spouse of
 9 another individual in subsection (a)(2), the court shall review the
 10 following:

- 11 (1) the duration of the relationship;
- 12 (2) the frequency of contact;
- 13 (3) the financial interdependence;
- 14 (4) whether the two (2) individuals are raising children together;
- 15 (5) whether the two (2) individuals have engaged in tasks directed
- 16 toward maintaining a common household; and
- 17 (6) other factors the court considers relevant.

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